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14/11/08

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.M.P. 446/2007

PETITIONERS		Girendra Sahu @ Girendra Kumar Sahu & another
	Versus	
RESPONDENT		State of Chhattisgarh

POST FOR ORDERS ON 15th November, 2007

Sd/-
Dhirendra Mishra
Judge

(322)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.M.P. No.446/2007

PETITIONERS

1. Girendra Sahu @ Girendra Kumar Sahu, son of Late Ghasiyaram Sahu, aged about 28 years, resident of Village Bhainsbod, P.S. Bhakhara, Tehsil Kurud, District Dhamtari (CG).
2. Ishwar Sahu, son of Shri Bhagwat Sahu, aged about 30 years, resident of Village Bhainsbod, P.S. Bhakhara, Tehsil Kurud, District Dhamtari (CG).

Vs

RESPONDENT

State of Chhattisgarh, through the Secretary, Ministry of Home, D.K.S. Bhawana, Raipur / the Station House Officer, Police Station, Bhakhara, District Dhamtari.

Present:
Mr. B.P. Sharma, Advocate with Mr. Kshitiz Sharma, Advocate for the petitioners.
Mr. G.K. Beriwal, Dy. Advocate General for the respondent.

O R D E R
(Passed on 13th November, 2007)

Dhirendra Mishra, J

1) The petitioners by this petition under Section 482 of Code of the Criminal Procedure, 1973 (for brevity "Code") have prayed for quashing of the charge sheet of Annexure P-1

filed by the Police Station Bakhara, District Dhamtari under Section 306/34 of the Indian Penal Code (for short "IPC") against the petitioners & 18 other accused persons showing the petitioners absconding and one Sudama Sahu as dead.

2) Briefly stated facts of the prosecution case, as mentioned in the First Information Report (for short "FIR"), is that on 6.3.2007 deceased Laxman, his son Ashok and daughter-in-law Lakheshwari had beaten Tukaram in relation to a dispute of money transaction. Tukaram lodged the report whereupon they were arrested, charge sheet was filed and a criminal case is pending against them in the Court of Judicial Magistrate 1st Class, Kurud. Said Tukaram also filed an application before the President of Sahu Samaj in relation to the same incident, whereupon meeting of Sahu Samaj was held on 10.4.2007 and in the said meeting it was decided that because Laxman, his son & daughter-in-law had beaten accused Tukaram with slippers, therefore:-

- they shall arrange community dinner (Bhari-bhat) to the members of Sahu Samaj.
- they shall pay penalty of Rs.6,200/-.
- the case will continue in the court; and lastly
- they have to leave their pucca house or they shall break their house.

The decision of the Samaj was to be complied with within a period of one week and if the decision is not complied with, they shall be ex-communicated from the society.

3) The deceased could not comply with the decision whereupon in the meetings of Sahu Samaj dated 27.4.2007 & 10.5.2007 it was decided that the deceased and his family members will be ex-communicated, no one shall talk to them, no one

shall visit them or dine with them. Other community services such as grocery shop, barber facility etc were stopped and deceased Laxman and his family members were completely outcaste by depriving them of social intercourse. Because of the above economical and mental torture, deceased Laxman committed suicide in the intervening night of 13th & 14th of May, 2007 by consuming poison.

4) During investigation photocopies of seven pages were seized from the pocket of the deceased which pertain to the proceedings of meetings dated 8.3.2007, 1.4.2007 & 10.4.2007 of Sahu Samaj in which penalty was imposed on the deceased. Documents also mentioned that the doctor had refused to treat the deceased on 13.5.2007 and various steps were taken to excommunicate the deceased and his family members, as per decision of the Samaj. Complaint of Tukaram dated 20.3.2007 addressed to Sahu Samaj, wherein it has been complained that daughter-in-law of the deceased beat her at the instance of deceased Laxman, was seized. Proceedings book of Sahu Samaj 'Jai Karma Sahu Samaj' Bhainsbod was also seized. Complaint dated 11.5.2007 filed by deceased Laxman to the Collector, Dhamtari wherein he has complained against imposition of penalty and out-casting him from the society with a copy to the Station House Officer, Bakhara, Superintendent of Police, Dhamtari was also seized.

5) During investigation statements of Ashok, Chainsingh & Chandrhaas, sons of deceased, Ganeshiya Bai, widow of deceased & Lakheswari, wife of Ashok, Nandkumar, Ganesh Ram Sahu, Rohit Kumar Kanwar, Makhanlal Sahu, Kameshwar Singh Sahu and other witnesses have been recorded.

6) Ashok, son of deceased, has stated that they have constructed a pucca house over the land in which they reside with his family. On 6.3.2007 he, his wife Lakheswari and his father Laxman had beaten Tukaram in money transaction related dispute, whereupon, Tukaram lodged the report against them, they were arrested and charge sheet has been filed against them in the court. Tukaram also made complaint before Sahu Samaj whereupon meeting of Sahu Samaj was convened on 10.4.2007 in which accused persons and other 100-125 persons participated. The deceased and his family members were also called in the said meeting. They were asked as to why they beat Tukaram by slippers. When Lakheswari was asked as to why she beat him by slippers, she said that on being asked by Ganeshiya she beat him. Thereupon the penalty, as mentioned above, has been imposed and they were directed to comply with the penalty within a period of one week. Since the imposition of penalty was onerous and they were also directed to demolish their pucca house, they could not comply with the decision of Sahu Samaj and 20 days thereafter in the meeting, which was attended by them and 200-300 persons of the village, they were ousted from the community and because of this illegal action his father left the home on 13.5.2007 and on 14.5.2007 at about 5.30 p.m. they were informed that his father has committed suicide by consuming poison. Almost similar averments have been made by the other witnesses in their diary statement.

7) Learned counsel for the petitioners submits that the custom of imposing penalty to enforce discipline in the community is practiced in rural areas of Chhattisgarh and the above custom prevailing in the society has attained force of law. Custom of excommunicating its member on the religious

grounds has been upheld by the Hon'ble Supreme Court in the matter of **Sardar Syedana Taher Saifuddin Saheb Vs. State of Bombay**[1]. It was further argued that even if the allegations present in the charge sheet are accepted in its entirety, the same does not constitute abetment to commit suicide punishable under Section 306 of the IPC, as there is no evidence that the petitioners instigated the victim to commit suicide or that they engaged themselves in any conspiracy with others for the commission of suicide or they intentionally aided by any act in the omission to commit suicide. It was further argued that last meeting of Sahu Samaj was held, as per allegations in the charge sheet, on 7.5.2007, whereas, the deceased committed suicide after a week on 14.5.2007 and thus there is no proximity between the act of alleged abetment and commission of suicide on the basis of said abetment. In the intervening period the deceased had complained before the authorities on 11.5.2007, as is evident from the documents available in the charge sheet. Reliance is placed on **Netai Dutta Versus State of W.B**[2], **Pawan Kumar Bhalotia Vs. State of W.B.**[3], **Sanju Vs. State of M.P.**[4] and **Ramesh Kumar Vs. State of Chhattisgarh**[5].

8) On the other hand, learned counsel for State has submitted that the petitioners and other accused persons imposed the penalty upon the deceased Laxman, which entail heavy financial burden on the deceased. They were also directed to leave their pucca house or demolish their pucca house, which could cause them financial loss of Rs.3-4 Lac. The deceased was given seven days time to comply with the

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[1] **AIR 1962 SC 853**
[2] (2005) 2 Supreme Court Cases 659
[3] (2005) 2 Supreme Court Cases 661
[4] (2002) 5 Supreme Court Cases 371
[5] (2001) 9 Supreme Court Cases 618

direction of Samaj and thereafter they were completely outcaste from the society resulting in total stoppage of community services apart from social intercourse. The complaint filed by the deceased to the local administrative authorities reflects his state of mind and because of this excommunication the deceased was subjected to continuous financial and mental torture which forced him to take extreme step of commifting suicide by consuming poison. Thus, the illegal acts of the petitioners and other accused persons amounts to abetment to commit suicide and therefore, the prosecution of the petitioners and others cannot be quashed at the initial stage.

9) I have heard learned counsel for the parties.

10) The facts that emerges from perusal of charge sheet are:-

a. Deceased Laxman and his family reside over a pucca house constructed over the government land.

b. There was a dispute between the deceased, his son Ashok & daughter-in-law Lakheshwari with Tukaram in some money transaction related dispute whereupon Lakheswari beat Tukaram at the instance of deceased as a result of which report was lodged and the deceased and above persons are facing prosecution.

c. In relation of same incident, Tukaram also lodged complaint with the President of Sahu Samaj, whereupon, a meeting was convened on 10.4.2007 in which the petitioners herein, who are Sarpanch & Panch respectively of Gram Panchayat Bhainsbod also participated. The deceased and his family members were also summoned.

d. In the said meeting a decision;

- ❖ to impose penalty of Rs.6200/-;
- ❖ to arrange community feast (Bharri-bhat).
- ❖ to vacate the house constructed on encroachment.

was taken and 07 days' time was given to the deceased and his family members to comply with the directions failing which they were to be excommunicated from the society.

e. However, the deceased could not comply with the directions as it involves serious financial implications beyond his reach.

f. The general meeting of the villagers was convened after about 20 days of the above meeting and in the said meeting also the petitioners were present. In the said meeting it was decided to excommunicate the deceased and his family members as a result of which the villagers snapped total social relationship with the family of the deceased. They were refused provisions from the grocery shops and medical shops and even doctors did not attend them.

g. Report of the above incident was lodged by the deceased before the authorities.

h. The deceased committed suicide by consuming some poisonous medicine and his dead body was found on 14.5.2007.

11) Thus, from the material available in the charge sheet it is evident that the deceased and his two family members were already facing prosecution for the offence committed by them. In the meanwhile, on the basis of report of the complainant of that incident, the Samaj has imposed a fine

of Rs.6,200/- on the deceased. He has also been directed to vacate the house in which he is staying and to arrange the community feast (bharibhat) for the members of the society and this decision was taken in a meeting which was attended by the present petitioners, who also happened to be Sarpanch and Panch of the Gram Panchayat.

12) In the matter of **Sardar Syedana Taher Saifuddin Saheb Vs. State of Bombay**[1] the petitioner had questioned the constitutional validity of the Bombay Prevention of Excommunication Act, 1949 on the ground that the same interferes with the right of freedom on conscience and freedom to prevent practice and propagate religion as an individual as also to the community at large acting through its religious head. It was contended by the petitioner that as the head of the community of Dawdi Bohra community he had fundamental right to excommunicate, which could not be affected by the impugned Act, as the same was in violation of Articles 25 & 26B of the Constitution. The Hon'ble Supreme Court allowed the petition with an observation that the Dai-ul-Mutlaq is an essential part of the creed of Dawdi Bohra community. Faith in his spiritual mission and in the efficiency of his ministration is one of the bonds that hold the community together as a unit. The power of excommunication is vested in him for the purpose of enforcing discipline and keeps the denomination together as an entity. The purity of the fellowship is secured by the removal of persons who had rendered themselves unfit and unsuitable for membership of the sect. The power of excommunication for the purposes of ensuring the preservation of the community, has therefore, a prime significance in the religious life of every member of the group. A legislation which penalizes this power even when

exercised for the purposes above-indicated cannot be sustained as a measure of social welfare or social reform without eviscerating the guarantee under Article 25 (1) and rendering the protection illusory.

13) However, in the instant case the deceased and two of his family members were facing prosecution for the offence committed by them under the common law on the complaint of Tukaram and during the pendency of above prosecution, Sahu Samaj in its meeting have further punished the deceased by imposing the penalty, as mentioned above.

14) After coming into force of the Indian Penal Code a person can be punished under the Code and not otherwise for every act of omission contrary to the provisions thereof of which he shall be guilty within India. All breaches of social etiquettes, caste or custom are now no longer penal and they are, therefore, no longer punishable merely because they were punishable before. The Code is now, therefore, not only the penal but also a moral code. Now it is not open to any individual, group of persons and society to impose penalty on any individual. Recovery of illegal penalty so imposed by intimidation of excommunication and thereby induce such person to deliver the pecuniary penalty so imposed is an offence punishable under the Code. Article 17 of the Constitution expressly abolishes untouchability and its practice in any form and excommunicating an individual from the society amounts to practicing untouchability, which is an offence punishable in accordance with law.

15) Therefore, in the considered opinion of this Court the submission of learned counsel for the petitioner based on the principle of law laid down in the judgment of Sardar Dyedana Taher Saifuddin Saheb Vs. State of Bombay[1] and

further submission of learned counsel for the petitioners that custom of imposition of penalty in rural Chhattisgarh and excommunication of individual member by these caste organizations, which is acknowledged since long, has attained the force of law and therefore, the petitioners cannot be proceeded against for the alleged act, are not acceptable.

16) So far as the argument of learned counsel for the petitioner based on the judgments of Netai Dutta Versus State of W.B.[2] Pawan Kumar Bhalotia Vs. State of W.B.[3], Sanju Vs. State of M.P.[4] and Ramesh Kumar Vs. State of Chhattisgarh[5] that even if the allegations present in the charge sheet are accepted in its entirety, the allegations against the petitioners does not constitute offence punishable under Section 306 of the IPC, as the ingredients of abetment, as defined under Section 107 of the IPC, are missing is concerned, it is open to the petitioners to make submission before the trial Court at the stage of framing charge and the same may be considered in accordance with law. However, no case is made out for quashing the entire charge sheet at this initial stage.

17) In the result, the petition is dismissed with the observations made, as above.

Sd/-
Dhirendra Mishra
Judge

Roshan/-